

The Green Pact and Rule of Law in the EU

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The governments of 13 EU member states have signed a [letter](#) calling for a "green" way out of the COVID-19 crisis (although [the Czech government has asked the EU to "forget" about its Green Pact](#)). Interesting as this initiative may be, the EU must ensure that it does not become an instrument that undermines the fight for the rule of law in the EU. The history advises us to be vigilant because EU funds may become a useful instrument in hands of illiberal governments.

In February 2020, the European Commission proposed the creation of a new the [Just \[energy\] Transition Fund](#), which aims to mobilize around 100 billion euros, from a more modest endowment of 7,500 million. None could question the appeal of this proposal and its democratic soundness: [90% of EU citizens support a larger protection from the environment](#). However, the details of the initial draft for the distribution of this fund call into question its intended justice. According to [Commission calculations](#), Poland would obtain almost 25% of the Fund, and together with Germany they would reach 33%. Since these two [are responsible for 30.2% of the EU's CO2 emissions according to 2017 figures](#), the logic of this distribution seems clear: those polluting more would require a larger effort of adaptation. Although the funds, as the name implies, are intended to finance the "just" transition to a sustainable energy model, the proposed distribution conveys a perverse perception of the notion of justice.

On the one hand, the so-often mentioned "moral hazard" does not seem to inform this notion of justice: although funds are available for several states, those that pollute the most and have done comparatively less to reduce their emissions receive more support. Those countries that took more intense and socially more damaging measures to reduce CO² emissions will paradoxically be rewarded less.

The distribution of funds points also to an additional questionable paradox: the only member state that explicitly refused to commit to the goal of achieving 'climate neutrality' by 2050 (in line with the objectives of the Paris Agreement) at the December 2019 European Council (i.e. Poland) becomes the largest beneficiary of the funds. This outcome may well result from a negotiating tactic by the Polish government or an incentive designed by the Commission to attract it to the climate consensus. But in either case, rewarding the discordant and critical and penalizing the compliant conveys a poor idea of how the EU values compliance with norms. And conveying consistently this message, i.e. complying with the rules matters, is crucial in fighting rule of law breaches.

In fact, it is in the relation to the defense of the rule of law by the EU where the justice of the conception of the new mechanism becomes more questionable and even troubling. Poland has, since December 2017, been subject to a procedure for

threatening to break the rule of law and, furthermore, the European Commission has opened several procedures for infringement of Community law in relation to judicial independence. In all these cases, the Polish government has kept a defying attitude.

The Polish government (like the Hungarian) benefits within the EU from what prof. Kelemen has called “[authoritarian equilibrium](#)”: the political support of those governments for certain collective decisions (such as, for example, the election of the last President of the Commission, in which the Polish government actively boycotted the Commissioner who had boldly sought to enforce the Polish authorities with the rule of law, Frans Timmermans), protects them from extreme sanctions for their violations of the rule of law. In this equilibrium, EU funds play an important role: Generous EU aid lubricates the internal popularity of illiberal governments as they serve to present themselves as the guarantors of community *mana*. In fact, there is some poetic irony in the fact that the Commissioner formerly in charge of defending the rule of law and defenestrated with the support, among others, of the governments of Poland (and Hungary) in his bid to become president of the Commission is now the Commissioner in charge of the European Green Pact, and responsible for the distribution proposal that favors the offender. Thus, the perverse unintended consequence of the new “just” fund is not only to produce a questionably unfair distribution but also stimulating moral hazard from those governments that openly question central EU values.

The EU has spent some years discussing how to reinforce conditionality linked to compliance with the rule of law in the disbursement of structural funds. Allocating new funds without *a priori* guaranteeing compliance with the commitment to EU values does not guarantee a green future, but rather the improper use of them.

